

Plaintiff, on behalf of the Class, submits this response to Defendants’ Motion to Amend the Judgment Pursuant to C.R.C.P. 59(a)(4) (the “Motion”). Plaintiff opposes the Motion, but acknowledges the Court’s comments at the March 17, 2026 status conference that Defendants’ proposed revision to the injunction is consistent with the Court’s intent. Plaintiff therefore focuses this response on the content of Defendants’ proposed changes.¹ Plaintiff is concerned that Defendants’ proposed revisions will enable the very conduct that the trial evidence established and that the Court enjoined.

In its findings and conclusions, the Court noted that, although CDOC regulations prohibit the use of Restricted Housing as a direct sanction for a single failure to work violation, “the evidence reveals a policy that enables utilizing ‘procedural stacking’ and temporary placement [in RH] to bypass this protection.” Findings and Conclusions (“F&C”) ¶ 167. And as Defendants acknowledge, *see* Motion at 3, the evidence at trial demonstrated that Defendants charged incarcerated people with additional COPD violations in connection with their refusal to work, despite there being no evidence that any additional conduct meriting such violations had occurred. *Id.* ¶ 103. For example, Defendants charged Nadia Reed with Advocating or Creating a Facility Disruption with no credible evidence that Ms. Reed presented a security risk or an imminent threat to the safety of others. *See id.* ¶¶ 26, 104.

Defendants’ proposed revised language would allow this conduct to persist. Defendants propose that the Court modify its injunction to permit additional charges or actions “where the particular circumstances of the inmate’s conduct present a safety or security risk to themselves or

¹ In doing so, Plaintiff does not concede that Defendants’ arguments are correct and specifically reserves the right to respond to said arguments in future briefing or appellate practice.

others, or when the inmate engages in additional behaviors beyond solely failing or refusing to work that would support a different COPD charge or sanction.” Motion at 8. The problem with this proposal is that it ignores Defendants’ past conduct, which included charging incarcerated people for additional COPD violations based on “no credible evidence.” F&C ¶ 26.

Specifically, CDOC officials testified at trial that a facility disruption charge can result from a “work stoppage” where an incarcerated person refuses to work, Tr. 697:22-25, 838:10-24, 840:7-10, that the size of the disruption does not matter, Tr. 804:17-21, and can be used to charged an incarcerated person who refuses to work if it causes some undefined “domino effect”, Tr. 804:24-805:6. And when testifying about disobeying a lawful order, CDOC officials agreed that failing to comply with a directive, including a directive to work, could result in being charged with a DLO COPD, Tr. 463:6-464:7, 747:9-22, 836:12-838:9. Moreover, CDOC officials testified that a DLO COPD is appropriate where an incarcerated person refuses to work using “aggressive or combative *language*” or is “*verbally* combative”, Tr. 835:9-15, 838:7-9 (emphasis added), despite also testifying that the “noncompliance” element of the DLO is “refusing to obey the order,” Tr. 836:2-4. Plaintiff is therefore concerned that Defendants will continue to manufacture a basis for procedural stacking of multiple violations, thereby subjecting incarcerated people to the conditions that the Court already determined violate their Constitutional rights. *See id.* ¶ 55 (“This policy that allows for the bootstrapping an FTW violation into a multi-conviction disciplinary record to justify physical isolation is a transparent loophole.”).

For these reasons, Plaintiff proposes the following revisions to the Court’s injunction, which Plaintiffs respectfully submit remain true to the Court’s intent while addressing both parties’ concerns. First, Plaintiff proposes that paragraph 2 of the injunction be modified as follows:

(2) cease the policy that allows for “procedural stacking” or “double charging” inmates for a refusal to work. Defendants are specifically enjoined from charging or sanctioning inmates for a second, derivative offense (such as “Disobeying a Lawful Order” or “Advocating or Creating a Facility Disruption”) when such charge arises out of, or is part and parcel of, the initial refusal to work. Defendants may not charge or sanction inmates for other COPD violations in addition to FTW unless the particular circumstances of the inmate’s conduct present a serious and documented safety or security risk to themselves or others. If the inmate engages in additional behaviors beyond solely failing or refusing to work that would support a different COPD charge or sanction, Defendants may charge additional offenses, but only if such offenses, standing alone, would merit such charge absent the failure to work.

Second, Plaintiff proposes the following addition to the injunction to make clear that failure to work should not, standing alone, result in a charge that carries the potential for a Restricted Housing (“RH”) sanction:

(4) cease the policy that allows for charging or sanctioning inmates for a refusal or failure to work with COPDs that allow for an RH sanction. Defendants are specifically enjoined from charging or sanctioning inmates for any COPD other than failure to work (such as “Disobeying a Lawful Order” or “Advocating or Creating a Facility Disruption”) when an inmate has solely refused or failed to work. Defendants are specifically enjoined from threatening the same.

To the extent the Court believes it should modify the injunction, Plaintiff’s proposed revisions strike the appropriate balance between the need to protect the constitutional rights of incarcerated people not to be forced to work against their will and the State’s concerns. Plaintiff’s proposal also ensures that, to the extent Defendants do charge incarcerated people with multiple COPD offenses, the underlying facts and basis for those charges will be appropriately documented.

Defendants cite cases regarding judicial review of prison disciplinary proceedings to argue that the Court should not unduly encroach on prison administration. *See* Motion at 5-6. But those cases largely involve a direct review of individual punishments meted out by prison officials – not, as here, a Court’s determination that the Defendants’ policies and practices violated the

constitutional rights of a class of incarcerated people. *See, e.g., Kodama v. Johnson*, 786 P.2d 417, 419 (Colo. 1990) (prisoner sought review of forfeiture of good time credits imposed in a D.O.C. disciplinary proceeding); *People v. Watson*, 892 P.2d 388, 389 (Colo. App. 1994) (in criminal prosecution, prisoner contended prior prison disciplinary proceeding raised double jeopardy concerns). And the United States Supreme Court opinion that Defendants cite recognizes that “there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution[.]” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). That mutual accommodation is accomplished by Plaintiff’s proposed revision.

Given this context, and the Court’s prior comments, Plaintiff respectfully submits that, should the Court wish to modify its injunction, it adopt Plaintiff’s proposed revisions, which more appropriately balance the need to protect class members’ rights from overzealous and under-documented charging decisions than do those proposed by Defendants.

Respectfully submitted, April 2, 2026.

s/Victoria E. Guzman
David H. Seligman, #49394
Brianne Power, #53730
Juno Turner (*pro hac vice*)
Victoria E. Guzman, #55401
Towards Justice
1580 N Logan Street
Ste 660 PMB 44465
Denver, CO 80203-1994
Phone: 720-441-2236
david@towardsjustice.org
brianne@towardsjustice.org
juno@towardsjustice.org
victoria@towardsjustice.org

David G. Maxted, #52300
Stephanie M. Frisinger, #58023

Maxted Law LLC
1543 Champa Street Suite 400
Denver, CO 80202
Tel: 720-717-0877
dave@maxtedlaw.com
stephanie@maxtedlaw.com

Attorney for Plaintiffs and the Class

Certificate of Service

I hereby certify that on April 2, 2026, I served the foregoing Response to counsel of record for all parties by filing it on the Court's electronic docketing system.

s/ Victoria E. Guzman

Victoria E. Guzman